

# DRAFT

April 11, 2001

**To:** Don Sloma, Executive Director  
Washington State Board of Health

Mary C. Selecky, Secretary  
Department of Health

**Through:** Bill White, Assistant Secretary

**From:** Gregg Grunenfelder, Director

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**Subject:** REQUEST TO DEVELOP RULE REVISIONS TO CHAPTER  
246-290 WAC, GROUP "A" PUBLIC WATER SYSTEMS

## Intended Rule

The Division of Drinking Water is proposing to revise the Group A Public Water Systems Regulation, chapter 246-290 WAC. This revision is necessary in order for state regulations to be consistent with Environmental Protection Agency (EPA) promulgated rules. The proposed revisions to chapter 246-290 WAC will encompass the following EPA rules:

- Revisions to the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Stage 1 Disinfectants and Disinfection Byproducts (Stage 1 DBPR) {Federal Register, Vol. 65, No. 73};
- Lead and Copper Rule Minor Revisions (Federal Register, Vol. 65, No. 8);
- Revised Public Notification Rule (Federal Register, Vol. 65, No. 87); and
- Radionuclides (Federal Register, Vol. 65, No. 236).

## **Need for the Rule**

As the primacy agency, the Department of Health is responsible for implementing rules consistent with EPA Rules and Regulations. The Washington State Board of Health bears the responsibility of adopting these rules.

The SDWA reauthorization of 1996 (Public Law 104-182) gives the states two years from the time EPA publishes final rules or guidelines to adopt state regulations. Given the number of recently promulgated rules, it is not realistic to complete the rule revision process multiple times within given state or federal timelines, therefore, packaging a number of these rules together is necessary. If the department does not complete revisions to state regulations within specified federal timelines, the department could lose primacy to EPA and implementation and enforcement responsibility of the SDWA regulations for Washington State could revert back to EPA.

## **Is there an alternative to rulemaking?**

There are no other alternatives to rulemaking. The primacy agreement between the department and EPA reflected in RCW 70.119A.080 requires state rules be consistent with federal rules and regulations.

## **Discussion of Alternative**

See above discussion.

## **What is the public health benefit?**

The public health benefits of these rules are to strengthen protection against microbial contaminants, while causing no increase in disinfection byproducts; to ensure consumers are apprised of the quality of their drinking water; and to strengthen protection against radionuclides in drinking water.

## **Are there any impacts on local health districts?**

The EPA rule changes are not expected to affect local health jurisdictions (LHJs) because the department is the primary agency that implements requirements set forth in chapter 246-290 WAC. Most LHJs work with the department through Joint Plans of Operation (JPOs) that outline duties and responsibilities for Group B water program administration (non federally regulated systems). The DDW is responsible for administering the Group A water system program (federally regulated systems). A few LHJs may be affected by the rule changes since they have taken on some of the Group A activities that overlap with the Group B activities, such as well site inspections and limited plan reviews.

### **What is the statutory mandate (federal or state) for the rule**

Washington state's statutory for rulemaking is RCW 43.20.050, Powers and Duties of the State Board of Health and RCW 70.119A.080, Public Water Systems, Penalties and Compliance. The federal statutory mandate is Public Law 104.182.

### **If this rule adopts federal regulations or consensus codes, does the regulation or code provide the program any discretion or flexibility?**

There are several discretionary options included in the federal regulations. Currently, program staff have identified discretionary components in the public notification rule, the lead and copper rule minor revisions, and the radionuclides rule. The IESWTR/DDBP rule has not yet been evaluated for flexibility. The department will thoroughly evaluate where options exist and which options are most appropriate to adopt through the rule making process. Regardless of the path we choose, we expect some political consequences as a result of this rule revision.

### **What are the political consequences?**

There are approximately 4,270 Group A systems in the state of Washington. Approximately 50 systems will be affected by the IESWTR/DDBP; 2,600 affected by the lead and copper minor revisions; all 4,270 potentially affected by the revised public notification; and approximately 2,353 will be affected by the radionuclides rule. Many of the public water systems have been aware of the upcoming rules through EPA's process of stakeholder and regulation involvement process. However, due to the diverse nature of the rule changes both required and those that allow flexibility and the number of systems affected, we expect a variety of responses.

Three of the four EPA rules have been analyzed by department staff thus far: Lead and copper minor revisions; Radionuclides; and Public notification. Reactions to the lead and copper revisions are expected to be minimal because most water systems meet the requirements. The reaction to the radionuclides may be strong since the revisions require additional testing initially; however, testing frequency decreases as water quality improves reducing the impact of the changes. The public notification rule appears to hold the most opportunity for controversy; however, community's interest in drinking water quality will be a persuasive argument for water systems to accept the revisions. Program staff continue to analyze the IESWTR/DDBP rule changes. We don't expect controversy over these rule changes since they are primarily refinements to existing regulations and apply to a small number of systems, those with 10,000 connections or more.

While we cannot be assured of only positive reaction to these proposed rule revisions, we do expect the negative reaction to be minimal and relatively easy to manage.

### **What are the economic consequences?**

Over the long term, we expect contaminant levels addressed by these rules to be at relatively low levels, thus reducing monitoring costs for systems because they will be able to sample on a six or nine year cycle rather than a three year cycle (Standardize Monitoring Framework). Initially, however, systems can expect increased costs due to additional sampling and reporting requirements associated with the radionuclide rule. There is potential for increased costs associated with treatment for systems that exceed an MCL (i.e., mitigation costs); and costs associated with public notification preparation, distribution, and repeat notification. Increased public notification costs only apply if the public water system is required to give notice due to a violation or other situation requiring public notice.

### **Does this rule require intra- and inter-agency coordination?**

The rule does not require intra- or inter-agency coordination as the Drinking Water Division is the sole state agency involved with the proposed revisions.

### **Does this rule require different performance requirements for private and public entities?**

Performance requirements do not differ for private or public entities. All affected public water systems, regardless of ownership, will be required to comply with the revisions to the rule.